

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

Case No.: 8:19-bk-11153-MGW
Chapter 7

Daniel Carter McNamee

Debtor.

MOTION TO SELL REAL PROPERTY AND
PAY SECURED CREDITOR(S) AND TRANSACTIONAL COSTS
(3420 Bloomingdale Oaks Drive, Valrico, Florida 33596)

NOTICE OF OPPORTUNITY TO
OBJECT AND REQUEST A HEARING

Pursuant to Local Rule 2002-4, the Court will consider the relief requested in this paper without further notice or hearing unless a party in interest files a response within 21 days from the date set forth on the attached proof of service, plus an additional three days for service if any party was served by U.S. Mail. If you object to the relief requested in this paper, you must file a response with the Clerk of the Court at 801 N. Florida Ave., Suite 555, Tampa, FL 33602-3899 and serve a copy on the movant's attorney, Richard M. Dauval, 3900 1st Street North, Suite 100, Saint Petersburg, FL 33703, and any other appropriate persons within the time allowed.

If you file and serve a response within the time permitted, the Court will either schedule and notify you of a hearing, or consider the response and grant or deny the relief requested without a hearing.

If you do not file a response within the time permitted, the Court will consider that you do not oppose the relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

COMES NOW Angela Welch, Chapter 7 Trustee, by and through her undersigned counsel, and hereby moves for authority to sell certain improved real property, to pay secured creditors and transactional costs, and in support thereof states as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b) (2) (A), (M), (N) and (O).
2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The basis for the relief requested herein are, *inter alia*, 11 U.S.C. §§ 105, 363(b) and Federal Rules of Bankruptcy Procedure 2002 and 6004.

BACKGROUND

4. On November 30, 2019, the Debtor commenced this case by filing a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code (the “Petition Date”).
5. Angela Welch was appointed Chapter 7 trustee (the “Trustee”).
6. The Debtor owns real property, by virtue of a deed, located at 3420 Bloomingdale Oaks Drive, Valrico, Florida 33596, more particularly known as:

Lot 19, Block 1, Bloomingdale Oaks, according to the map or plat thereof, as recorded in Plat Book 57, Page(s) 24, of the Public Records of Hillsborough County, Florida.

(hereinafter the “Property”).

7. The Trustee completed a title search and found that the Property is encumbered by several liens. By priority, but not including any outstanding property taxes or municipal liens, the Property is clouded as follows:
 - a. a Mortgage in favor of Mortgage Electronic Registration Systems, Inc., as nominee for Sun West Mortgage Company, Inc recorded in Official Records Book 24012, Page 414, which Mortgage is now held by Sun West Mortgage Company, Inc., a California Corporation, by virtue of Assignment(s) of Mortgage recorded in Official

Records Book 26969, Page 500, in the Public Records of Hillsborough County, Florida (hereinafter “Sun West Mortgage”);

- b. a Mortgage in favor of USAA Federal Savings Bank, recorded in Official Records Book 15835, Page 398, together with Subordination of Lien recorded in Official Records Book 24012, Page 431 in the Public Records of Hillsborough County, Florida, (hereinafter “USAA”);
- c. a Lis Pendens filed in case styled Sun West Mortgage Company, Inc vs. Daniel C. McNamee, et al, being Case No. 19-CA-011030 in Hillsborough County, Florida, as disclosed by Notice of Lis Pendens recorded in Official Records Book 27073, Page 630 in the Public Records of Hillsborough County, Florida.

8. The Trustee has accepted an offer from TNT Works, LLC (the Buyer(s)) to purchase the Property for the gross sale price \$ 222,100.00 subject to the approval of Sun West Mortgage, USAA, and the court, as payment in full. The Trustee believes it is a fair offer for the current economy, the condition of the Property, and the length of time the Property has remained on the market.
9. Any current real property taxes will be paid prorated.
10. The gross sale price of \$ 222,100.00, net the closing costs is estimated to be enough to satisfy the outstanding liens, as agreed to by Sun West Mortgage and USAA, that encumber the property and net the estate at least \$ 12,000.00. If Sun West Mortgage and USAA no longer consent to their proposed treatment they are hereby on notice that they need to object to the proposed sale of the Property.
11. The Trustee has attached a “DRAFT” Settlement Statement that outlines the proposed distribution of the sale proceeds at closing, as Exhibit A.

AUTHORITY TO SELL

12. Pursuant to § 363(b)(1) of the Bankruptcy Code, a trustee, after notice and hearing, may use, sell or lease property of the estate other than in the ordinary course of business.

CONCLUSION

13. The Trustee, in the exercise of her business judgment, believes, and therefore avers, that the proposed sale is in the best interest of the creditors of the bankruptcy estate, the Trustee is more familiar with the current market than other interested parties, and a sale under this motion serves the best interest of all interested parties, including the secured creditors. The Buyer has agreed, subject to Court approval, to pay to the Trustee the gross sum of \$ 221,000.00 in exchange for estate's interest in the Property.

WHEREFORE, the Trustee moves for the entry of an order:

- A. Authorizing the sale of the Property and,
- B. Authorizing the Trustee to take any all actions and to execute any and all documents necessary and appropriate to effectuate and consummate the terms of said sale of the estate's interest in the Property including without limitation, executing a deed conveying the interests of the Debtor to the Buyer, or his assigns, or ultimate purchaser;
- C. Authorizing the Trustee and any escrow agent upon the Trustee's written instruction, shall be authorized to make such disbursements on or after the closing of the sale as are required by the purchase agreement or order of this Court, including, but not limited to,
 - (a) all delinquent real property taxes and outstanding post-petition real property taxes pro-rated as of the closing with respect to the real property included among the purchased assets
 - (b) any outstanding Home Owner's Association fee or assessment arrearages; and
 - (c) other anticipated closing costs:

Total Sales/Brokers Commission:	
6% of base sale price to A to Z Realty	\$ 13,326.00*
*this commission is intended to be shared with a cooperating agent.	
Title Charges:	\$ 3,475.00.00
Government recording / transfer charges:	\$ 1,690.70
Satisfaction of Certain Liens:	
Sun West Mortgage	\$ 146,352.00
USAA	\$ 41,217.21

The Trustee seeks authority to pay the outstanding utilities and HOA charges, if any, in full and with the consent of all lienholders.

The above anticipated closing costs and taxes are subject to per diem charges, changes in prorations, and otherwise represent approximate amounts. The Trustee seeks authority to pay these amounts, or their reasonable equivalent amounts, to the respective payees depending on the subjective per diem alteration,

- D. That the 14 day stay period pursuant to Rule 6004(h) be waived, and
- E. Granting the Trustee such other and further relief as is just and proper.

Respectfully submitted,

/s/ Richard M. Dauval, Esquire
Richard M. Dauval, Esq.
LeavenLaw, P.A.
3900 1st Street North, Suite 100
Saint Petersburg, FL 33703
727-327-3328 x303

CERTIFICATE OF SERVICE

I certify that on April 26, 2020, a true and correct copy of the foregoing was provided by U.S. mail and/or electronic delivery to:

U.S. Trustee, USTPRegion21.TP.ecu@usdoj.gov;

USAA Federal Savings Bank, President, 9800 Fredericksburg Road, San Antonio, TX, 78288
(via certified mail)

Sun West Mortgage Company, Inc. c/o Shirley Palumbo, Esq., shirley.palumbo@gmlaw.com

Daniel Carter McNamee, 3420 Bloomingdale Oaks Drive, Valrico, FL 33596

G Donald Golden, Esq., don@brandonlawyer.com

Trustee Angela Welch, welchtrustee@gmail.com

and all parties of interest that have filed a proof of claim in this case or filed a notice of appearance pursuant to Rule 2002-1(c) on this April 26, 2020.

/s/ Richard M. Dauval, Esquire
Richard M. Dauval, Esq.